FEDERAL DEFENDER SERVICES
OF WISCONSIN, INC.
LEGAL COUNSEL

Craig W. Albee, Federal Defender
Krista A. Halla-Valdes, First Assistant

Joseph A. Bugni, Madison Supervisor
John W. Campion
Shelley M. Fite
Anderson M. Gansner
Gabriela A. Leija
Peter R. Moyers
Ronnie V. Murray
Tom E. Phillip
Joshua D. Uller
Kelly A. Welsh

22 East Mifflin Street
Suite 1000
Madison, Wisconsin 53703

Telephone 608-260-9900
Facsimile 608-260-9901

May 15, 2017

Honorable William M. Conley
United States District Court Judge
120 North Henry Street
Madison, Wisconsin 53703

Re: *United States v. Peter Diehl*
Case No. 16-cr-79

Dear Judge Conley:

Peter Diehl will appear before you for sentencing on Wednesday, May 17, 2017. The Court should sentence him to ten years' imprisonment to protect the public and punish his conduct.

Diehl's case underscores that public protection has both confinement and supervision components. For some offenders confinement must carry a heavier load than supervision because the available release conditions are crude tools to mitigate specific recidivism risks. A firearm possession crime is a good example because an offender on release can easily conceal another gun, and unlike say, drug use, there's no way to test for it after the fact.

Not so for Diehl and his recidivism risk. His supervised release conditions will be unusually effective at reducing his risk because the conditions are just a better fit for his specific offense conduct. Here, computers and telecommunications were his conduct's key ingredients. He didn't seek relationships with minors in his community. Instead he leveraged social media networks' breadth and anonymity to meet the two minors here. He needed weeks of private, anonymous messaging to build relationships with teenagers. On supervised release, he's won't have access to teenagers, let alone the privacy to chat with them for weeks. Face-to-face interactions won't be happening with the frequency and depth necessary to build any connection. As for online interactions, his release conditions cut off the access point he used before. Those social networks simply won't be available to him on supervise release, and any computer use will be monitored. Not to mention the travel restriction, which buys further assurance.

There's more. Unlike firearm possession or drug use, Diehl's conduct necessarily creates a digital footprint and witnesses—and he knows it. The panoply of release conditions just won't afford him the privacy, mobility, and time required for him to repeat and conceal this offense conduct while on supervision.

Before Diehl's release though he has a tab to settle, and ten years provides more than enough retribution here. For starters, Diehl has never been to prison, and a ten-year sentence amounts to about one-third of his lifetime thus far. Living at his mom's house is unlikely to have prepared him for the dangers and challenges of the big house.

Worse still, Diehl's federal sentence hasn't even started because he's in primary state custody, and his pretrial detention has been unusually long. The day of his sentencing will be his 602nd in county jail. County time is hard time, and he's already spent 600 days without direct sunlight or fresh air. That's a grim figure that should bear on this Court's ultimate sentence.

More generally, retribution always confronts the problem of diminishing marginal utility. A ten-year sentence makes Diehl suffer from confinement until

2027. It's hard to see how 2028 or 2029 or 2030 slakes society's thirst for justice in a way that release in 2027 does not. Put another way, those in 2027 who think he hasn't suffered enough for his 2015 conduct are unlikely to change their minds in subsequent years.

Sincerely,

/s/ Peter R. Moyers

Peter R. Moyers
Associate Federal Defender